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Erie Railroad v. Tompkins

Wendy Collins Perdue
University of Richmond, wperdue@richmond.edu

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Clean Hands. Where a person has engaged in improper conduct in a transaction and seeks equitable relief in respect to that transaction, a court applying this maxim will refuse relief. The maxim is a reflection of the principle of that equity operated as a court of conscience. A court cannot be used to promote or condone crimes or breaches of public morality. Thus, if a person seeks to set aside a transaction on the ground of fraud he must be free of any participation in the fraud. The maxim constitutes a defense only to equitable *remedies, injunction, and specific performance, for example. It does not apply to common-law remedies.

Laches. This defense is associated with maxim: "Equity aids the vigilant." Broadly defined, "laches" is any unreasonable delay by a person possessing a legal right in enforcing that legal right that produces prejudice to the person against whom the legal right is being enforced. In addition, the holder of a right may by his conduct be fairly regarded as waiving that right. A court will not grant an equitable remedy in favor of a person whose conduct amounts to laches or acquiescence. The prejudice following from the delay may be to third parties.

Estoppel. Estoppel is a substantive equitable principle that precludes a party to a legal proceeding from asserting against another facts, rights, or absence of legal rights. The object of estoppel is to preclude unconscionable departure by a person for an assumption for which he or she bears responsibility and that has been adopted by another as a basis for action or inaction, to his detriment. Estoppel existed as common law, as well as in equity. Equitable estoppel precluded the enforcement of equitable relief.

The major development was *promissory estoppel in which one party to a *contract who represents he will not enforce his rights, will be precluded from that enforcement. In this form estoppel remains a defense and this is properly described as equitable. The courts, however, in Anglo-American law began to accept that promissory estoppel could be cause of action where one party makes a representation to another which is relied upon to his detriment.

Constructive Trust. The courts of equity devised the institution of the *trust. Trusts are often expressly created by parties. A trustee holds property for the benefit of another, the beneficiary. The trustee holds the legal estate, the beneficiary, the equitable estate. Equity imposes exacting obligations on the trustee to handle the property for the benefit of the beneficiary.

A constructive trust is imposed where it would be unconscionable for the legal owner to retain the benefit of the equitable estate. The constructive trust is remedial in nature, although it effects a change in the nature of property. Constructive trusts are imposed for a number of reasons including giving recognition of a preexisting property right, enforcing equitable principles, encouraging observance of equitable obligations, deterrence of breaches of fiduciary duties and remedying unconscionable behavior including unjust enrichment. The constructive trust is a discretionary remedy, the imposition of which turns on the courts review of the rights of third parties and the conduct of the parties—it is a powerful remedy. The constructive trust gives a property interest enforceable against purchases to the beneficiary who has notice of the circumstances leading to the imposition of the constructive trust. The equity courts allowed holders of equitable rights to trace that as property into the hands of others. Like the express trustee, a constructive trustee is personally liable to compensate the beneficiary for losses caused in mishandling the property and to account for any profits made for its use.

In these maxims, defenses, and institutions of equity the common theme is that equity will not allow legal rights to be enforced in a harsh and unconscionable way, and will create remedies, like constructive trust, to more thoroughly and flexibly deliver just results beyond the parameters of legal rights and remedies.

[*See also* Procedure, Civil]

• Jairus W. Perry, ed. *Story's Equity Jurisprudence,* 12th ed., 1877. J. H. Baker, *An Introduction to English Legal History,* 3d ed., 1990. P. C. Hoffer, *The Law's Conscience: Equitable Constitutionalism in America,* 1990. D. Parkinson, *The Principles of Equity,* 1996.

—David F. Partlett

EQUITY JURISDICTION. *See* Equity.

ERIE RAILROAD V. TOMPKINS 304 U.S. 64 (1938), limited the power of federal courts to create judge-made law that would displace state law. Jurists view the Supreme Court's decision both a modern cornerstone of American judicial *federalism and an example of legal realism's influence.

Prior to *Erie,* federal *courts applied state statutory law, but did not feel bound to apply state *common law rules in areas of general law, such as torts and contracts. Instead, federal courts created their own common law in these areas. This was not viewed as displacing state authority because law, from a jurisprudential standpoint, was

thought to exist independently of any sovereign; thus, federal courts were as competent as state courts to ascertain the true common law. The *Erie* decision reflected growing concern about the unfairness of having different legal principles apply solely on the basis of whether the plaintiff brought the case in state or federal court. It also reflected legal realism's emergence as a jurisprudential theory and a rejection of the notion that common law is a transcendental body of law existing independently of any sovereign. The *Erie* holding that federal courts do not have the power to create general common law reflects the realist understanding that, if a federal court announces a common law rule, it is creating federal law and must have a basis of authority in the U.S. *Constitution. The Court found no such general authority, although federal courts can develop their own rules of procedure.

[*See also* Commercial Law; *Swift* v. *Tyson* (1842)]

• John H. Ely, "The Irrepressible Myth of Erie," *Harvard Law Review* 87 (1974): 693–740.

—Wendy C. Perdue

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ESTATE: TESTATE ESTATES

The owner of *property may dispose of it at death by a *will. The will is a formal document signed by the property owner, the "testator," and witnessed at its signing by two individuals. At the testator's death the will is submitted to a court to establish its validity. This is referred to as the "probate" (proving) of the will. The testator is said to die "testate."

The will was part of the English legal heritage of the American colonists. It was recognized by the English Statute of Wills (1540), a law based on existing customs. During the nineteenth century, American states tended to adopt more formal rules governing the execution of wills, and they treated land and personal property as the same for the purpose of disposition by will. Generally, only wealthy persons made wills in the nineteenth century, and wills were prepared by testators on their deathbed more frequently than in modern practice, with its focus on estate planning. After 1900, wealthy testators began to engage in careful planning of will provisions in order to minimize estate taxes and provide for future contingencies.

The will usually designates an executor, who during probate is appointed by the court to administer the estate of the testator. The executor collects the assets of the testator, pays the testator's creditors, the administration expenses, and any estate taxes owed by the estate, and distributes the remainder to those named in the will. The executor functions under the supervision of the court. The law of the state in which the testator was a resident at the time of death governs the will and the administration of the estate, except that federal estate taxes may be applicable to the estate.

In order to execute a valid will a testator must have the requisite mental capacity. This requirement is important because many testators are elderly. The testator must have the capacity to know the nature of his property, know the natural objects of his bounty, form an orderly disposition, and understand the disposition in his will. In addition, the testator must be free from undue influence in the execution of his will. An elderly testator may become subject to the influence of a person to such an extent that he cannot resist doing what that person wants him to do. This may result in executing a will that makes a disposition of property to such person that is unusual. If undue influence is judged to exist, the provisions of the will that are the product of undue influence are invalid. The circumstances that may give rise to a presumption of undue influence are a testator who is known to be susceptible to undue influence, a confidential relationship between the testator and the person allegedly exercising the influence, and a provision for the confidant in the will that is unusual.

The will has no legal effect during the life of the testator. It can be amended at any time or revoked in its entirety by a subsequent writing executed by the testator in accordance with the formalities required for a will. A will can also be revoked by the testator by destruction or by drawing lines across its face with the intention to revoke the will. The testator may execute a new will any number of times.

The will may contain several different types of gifts. With the "specific gift" the testator disposes of specifically described land or jewelry or other property. A testator who makes such a gift assumes that she will own that property at her death; if she does not, the gift may fail. Another form of gift is the "general gift," in which the testator disposes of a certain sum of money to a person. If there is insufficient cash in the estate to pay the gift, the executor sells assets of the estate to produce cash sufficient to pay the gift. A third form of gift is the "residuary gift." When the testator executes a will, she does not know exactly what she will own at the ti
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